The following passages occur in the judgment:

> "Their Lordships are unable to regard the disobedience to an express provision as to a mode of trial as a mere irregularity." "The remedying of mere irregularities is familiar in most systems of jurisprudence but it would be an extraordinary extension of such a branch of administering the criminal law to say that, when the code positively enacts that such a trial as that which has taken place here shall not be permitted, this contravention of the Code comes within the description of error, omission, or irregularity."

While the facts in that case differ entirely in their nature from those in the present case, the same principle is, in my view, common to both, inasmuch as a particular mode of trial is provided in regard to enquiries held under Chapter VII of the Code and an order under Section 76 is expressly directed as a foundation for such an enquiry.

I am, therefore, of opinion that the omission to make an order under Section 76 in this case is an illegality and not a mere irregularity and as such vitiates the proceedings.

The appeal is allowed and the order of the Magistrate set aside.

Appeal allowed.

Solicitors for the appellant—*Rogers & Son.*

[ORIGINAL CIVIL JURISDICTION]

PRICHARD, J.

July 5, 1934.

RE SIEW INN STEAMSHIP COMPANY. *EX PARTE* HO HONG BANK, LIMITED

(In Voluntary Liquidation)

In The Issue

TAN BOON CHEO.....Plaintiff.

v.

HO HONG BANK, LIMITED (In Voluntary Liquidation).....Defendant.

[SINGAPORE BANKRUPTCY No. 896 of 1932]

Partnership — Retirement of partner — Advertisement—Notice of dissolution in newspapers whether sufficient.

An advertisement in three local Chinese newspapers of the dissolution of a partnership is not *per se* sufficient notice to those having had dealings with the firm who have not actually seen it although they may be regular subscribers to the newspapers; but to fix them with knowledge of the fact so as to prevent them holding a retiring partner liable for debts incurred after retirement, express notice must be given.

Trial of an Issue before Prichard, J.

On the 3rd of February, 1933, a Receiving Order was made in these proceedings against the Siew Inn Steamship Co. and an Adjudication Order passed against the plaintiff in the Issue (Tan Boon Cheo) as a partner of the bankrupt firm.

On the 13th of May, 1933, the plaintiff applied to the Court for annulment of the Adjudication Order on the grounds *inter alia* that at the date of making the said Order he was not a partner of the firm and that he was not indebted to the petitioning creditors.

By Order of Court dated the 16th June, 1933, the application for annulment of the Order of Adjudication was adjourned and entered in the general cause list for further consideration and by a further Order of Court dated the 26th of September, 1933, the Court directed the following issue to be tried, namely:—

> Whether the said Tan Boon Cheo was or held himself out to the Ho Hong Bank, Limited, the petitioning creditors to be a partner in the Siew Inn Steamship Company and, if so, at what date if any the said Tan Boon Cheo give or cause to be given notice to the petitioning creditors that he had ceased to be a partner of the bankrupt firm.

In pursuance of the last-mentioned Order of Court pleadings were filed. The case for the plaintiff in the Issue was that prior to the 31st of December, 1931, he together with one Tan Siew Inn carried on the business of owning and operating steamships, under the firm name or style of "Siew Inn Steamship Co." On the 31st of December, 1931, the plaintiff in the Issue retired from the partnership and notice of the dissolution of partnership and retirement of the plaintiff from the firm was duly given by the plaintiff and Tan Siew Inn to the defendant Company in the Issue through an advertisement published in the three local Chinese newspapers, "Sin Chew Jit Pau," the "Nanyang Siang Pau" and the "Min Kuo Jih Pau" between the 12th and 16th of January, 1932, and by verbal communication from the plaintiff to the defendant company in or about the month of March, 1932. The Statement of Claim further stated that the defendant company commenced an action against the Siew Inn Steamship Company and recovered therein judgment and costs, the plaintiff not having been served with the Writ in the action. The plaintiff contended that the defendant company in obtaining with full knowledge of the dissolution of partnership above referred to, an Adjudication Order against him had acted wrongfully. The plaintiff claimed annulment of the Adjudication Order. By their defence the defendant company pleaded *inter alia* that they had no notice of the dissolution of the partnership of Siew Inn & Co. and contended that

the plaintiff was rightly adjudged bankrupt. It was not denied that the defendant Company regularly subscribed to the 3 news-papers in question.

Stuart for the Plaintiff in the Issue.

K. A. Seth for the Defendants.

Cur. Ad. Vult.

PRICHARD, J.—On the 26th September, 1933, Mills, J. made an order that Tan Boon Cheo and the petitioning creditors the Ho Hong Bank Limited should proceed to the trial of an issue in which the question to be tried was whether the said Tan Boon Cheo was or held himself out to the Ho Hong Bank Limited to be a partner in the abovenamed Siew Inn Steamship Company, and if so, at what date if any did the said Tan Boon Cheo give or cause to be given notice to the said Ho Hong Bank, Limited that he had ceased to be a partner of the said Siew Inn Steamship Company and that in the said issue the said Tan Boon Cheo should be plaintiff and the said Ho Hong Bank Limited should be defendants.

Pleadings were filed in due course. At the trial before me it was agreed that I should deal only with the question referred to in the order of the 26th September, 1933, as the pleadings went beyond the terms of the order.

It was not disputed that the Plaintiff had been a partner in the Siew Inn Steamship Company which had a current account at the Ho Hong Bank and that he had ceased to be a partner as from January, 1932, when the partnership was dissolved by a document of 8th January. Notices of dissolution were published in 3 Chinese local newspapers to which the Defendants were subscribers. The Defendants had obtained judgment against the Siew Inn Steamship Company for $873.50 (and $61.08 costs) being the balance including interest due on an overdraft of the account of the Siew Inn Steamship Company with the Defendants.

The Defendants on the 3rd February, 1933, obtained a receiving order against the Siew Inn Steamship Company and adjudication orders against the Plaintiff and Tan Siew Inn the other partner.

The real issue therefore before me was whether or not the Defendants had had actual notice that Plaintiff had ceased to be a partner.

The law is fully set out in *Lindley* on Partnership 9th edition pages 291, 292 and 293:

> "When a dormant partner retires, he need give no notice of his retirement in order to free himself from liability in respect of acts done after his retirement. The reason is that, as he was never known to be a partner, no one can have relied on his connection with the firm, or truly allege that, when dealing with the firm, he continued to rely on the fact that the dormant partner was still connected therewith.
>
> "But when an apparent partner retires, or when a partnership between several known partners is dissolved, the case is very different; for then those who dealt with the firm before a change took place are entitled to assume that no change has occurred until they have notice to the contrary. And even those who never had dealings with the firm, and who only knew of its existence by repute, are entitled to assume that it still exists until something is done to notify publicly that it exists no longer. An old customer, however, is entitled to a more specific notice than a person who never dealt with the firm at all; and in considering whether notice of dissolution or retirement is or is not sufficient, a distinction must be made according as the person sought to be affected by notice was or was not a customer of the old firm.
>
> "When a known partner retires, or a partnership is dissolved, notice of the fact is usually given to the world at large by advertisement, and to old customers by some special communication.
>
> "Public notice given by advertisement in the 'Gazette' is sufficient, not only against all who can be shown to have seen it, but also as against all who had no dealings with the old firm, whether they saw it or not. But an advertisement in any other paper is no evidence against any one who cannot be shown to have seen it. If, however, it can be shown that he was in the habit of taking the paper, that is evidence to go to the jury of his having seen not only the particular paper containing the advertisement, but also the advertisement itself; and if the jury are satisfied that he saw the advertisement, that will be sufficient, although no advertisement was inserted in the 'Gazette.' An advertisement, moreover, is not indispensable; its place may be supplied by something else.....
>
> "As against persons who dealt with the firm before any change in it took place, an advertisement without more is of little or no value, whether it be in the 'Gazette' or elsewhere. But if notice in point of fact can be established, it matters not by what means; for the Partnership Act, 1890, does not require, nor has it ever been held, that any particular formality must be observed. If an old customer can be shown

to have seen an advertisement, that will be sufficient; and evidence that he took in a certain paper is some evidence that he knew of a dissolution advertised therein....."

In our case the Plaintiff and his witness Chow Guan Cheng stated that actual notice was given verbally to Lim Bock Kee the then manager of the Ho Hong Bank. Bock Kee however completely denied ever having had the conversation referred to by the Plaintiff.

The Defendants also put in evidence a written statement given by the Plaintiff to a clerk of the Bankruptcy Office. It was taken on the special instructions of the Official Assignee who wished to see whether he had good grounds for opposing an application for annulment which the Plaintiff had made. This statement appears to be perfectly in order. In it the Plaintiff said he had not notified the bank. I prefer to rely on this documentary evidence and I hold that in fact Plaintiff never actually notified the bank as he alleged.

By paragraph 17 (2) of the Partnership Act, 1880, it is enacted that:—

"A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement."

Lindley at p. 293 says:—

"When once it can be shown that liability has attached to any partner, the onus of proving that such liability has ceased is upon that partner or those representing him."

In my opinion the Plaintiff has not discharged this onus. The notices in the Chinese newspapers, even though they appeared 18 times, were not sufficient. Actual verbal or written notice of his retirement should have been given by the Plaintiff.

Therefore as regards the issue I hold that Plaintiff was a partner in the Siew Inn Steamship Company and that he did not give notice to the Defendants that he had ceased to be a partner.

On the question of costs I am prepared to hear counsel.

Judgment for Defendants.

Solicitors for the Plaintiff in the Issue—
C. R. Stuart.

Solicitors for the Defendants—
Sisson & Delay.

[ORIGINAL CIVIL JURISDICTION]
HYNDMAN-JONES, C.J.
February 17, 1913.

IN THE MATTER OF THE ESTATE OF CHOO ENG CHOON (DECEASED).

TAN SIOK YANG & ORS.....Plaintiffs

vs.

CHOO ANG CHEE.....Defendant

[SINGAPORE SUIT No. 235 of 1912]

Practice—Service out of the jurisdiction—Notice of Writ—Less than judicial limit of time for entering appearance allowed — Irregular service—Non-production of original notice—Civil Procedure Code, 1907, ss. 90, 1339, 1340.

An Order was made for service out of the jurisdiction of a Notice of a Writ of Summons limiting the time within which the Defendant was to enter an appearance to "one month after personal service." The Notice which was issued on the 8th July, 1912, required the Defendant "within one month after the date of this Notice" to enter an appearance. A copy of the said Notice was delivered to the Defendant on the 2nd August, 1912, but there was no evidence that the Original Notice had been produced to him. On the 30th December, 1912, the Defendant took out a Summons to set aside the said Notice and service thereof:—

Held (1) that, inasmuch as the period of one month provided by the Order for service as the period within which to enter an appearance, had not been allowed to the Defendant, he was under no obligation to apply to the Court to set aside the Notice or service thereof and that the said Notice and service were invalid and not merely irregular and must therefore be set aside (2) that the non-production of the original Notice to the Defendant also invalidated the service thereof.

Adjourned Summons.

The Plaintiffs on the 28th June, 1912, obtained an Order for leave to issue a Writ of Summons for service out of the jurisdiction and for service of Notice thereof upon the Defendant at Saigon. The said Order also directed "that the time limited for the said Defendant to appear to the said Notice in lieu of Writ be one month after personal service on the said Defendant." On the 2nd July, 1912, a Writ for service out of the jurisdiction containing the time limited by the said Order was issued on the 8th July, 1912. Notice of the said Writ was issued containing the following words:—

"And you are required within one month after the date of this notice to defend the said suit by causing an appearance to be entered for you, in the said Court to the said suit. And in default of your so doing, (the plaintiffs) may proceed therein and judgment may be given in your absence." On the 10th December, 1912, an affidavit by Tan Hood Guan was filed which stated that he had on the 2nd August, 1912, served the Defendant with the Notice of the Writ by delivering the same to the latter personally at Saigon. The affidavit made no